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AT

Administrative Tribunal

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ADMINISTRATIVE TRIBUNAL

Judgement No. 620

Case No. 675: GRIPARI

Against: The Secretary-General of the United Nations

THE ADMINISTRATIVE TRIBUNAL OF THE UNITED NATIONS,

Composed of Mr. Jerome Ackerman, President; Mr. Samar Sen; Mr. Mikuin Leliel Balanda;

Whereas, on 16 January 1992, Paul Gripari, a former staff member of the United Nations Development Programme, hereinafter referred to as UNDP, filed an application that did not fulfil all the formal requirements of article 7 of the Rules of the Tribunal;

Whereas, on 21 May 1992, the Applicant, after making the necessary corrections, filed a corrected application requesting the Tribunal:

"...to find that:

(a) the Respondent's decision not to grant the Applicant's after-service health insurance was based on an ill-founded assessment of the situation;

(b) the Respondent denied the Applicant due process by:

(i) failing to respond to his request for a conciliatory procedure,

(ii) accepting the Joint Appeals Board report.

(c) the Respondent has failed to properly and fairly administer his staff, specifically the Applicant, by misinforming the

Applicant on the possibility of obtaining after-service health insurance.

...

(a) the Respondent to grant after-service insurance to the Applicant,

or failing (a)

(b) the payment of compensation for the fact that the Applicant has not received medical insurance since his retirement in 1981,

(c) the further payment of compensation for the moral suffering of an amount equivalent to three years net base salary at the level he was encumbering at the date of his retirement."

Whereas the Respondent filed his answer on 16 October 1992;

Whereas the facts in the case are as follows:

The Applicant entered the service of UNDP on 29 January 1965, as an Assistant Resident Representative in Mogadishu, Somalia, on a two-year fixed-term appointment. He served on a succession of fixed-term appointments at various UNDP Field Offices until his retirement on 31 July 1981.

From 1 June to 31 July 1965, the Applicant was a participant in the United Nations Headquarters contributory medical insurance plan provided under the Blue Cross/Aetna Group Insurance Policy. With effect from 1 August 1965, the Applicant canceled his participation in this plan and obtained non-contributory health insurance coverage, pursuant to United Nations staff rule 206.4 then in force, which provided for automatic insurance coverage by the Organization for all staff serving in field duty stations.

On 27 March 1967, the Director of Personnel announced to the staff, in administrative instruction ST/AI/172, that the existing health insurance schemes for UN staff had been extended to provide for after-service coverage. He informed them of the terms and conditions on which such coverage would be provided.

On 7 June 1972, the Officer-in-Charge of the UNDP Bureau of Administrative Management and Budget announced to all UNDP international field staff members, in circular UNDP/ADM/FIELD/21, that United Nations staff rule 206.4 was no longer in force, and that reimbursement of medical expenses under that rule would cease with effect from 1 July 1972, "for all international field staff members under the 100 and 200 Series of the Staff Rules". Such staff were advised to join the contributory Van Breda medical insurance plan.

On 29 June 1972, the Applicant submitted to the United Nations Insurance Unit an application for enrollment in the Van Breda insurance plan and became a participant in the plan, with effect from 1 July 1972.

On 5 March and 2 September 1980, the Applicant, in view of his expected retirement and separation from the Organization in 1981, wrote to the Director of Personnel, seeking information on after-service health and life insurance coverage.

The Division of Personnel, UNDP, transmitted the Applicant's request to the Chief of the Insurance Unit of the United Nations, who, on 13 May 1981, informed the Applicant as follows:

> "... We have reviewed your medical insurance participation records and would inform you that by 31 July 1981, you will be short by 8 months towards completing the 10-year contributory participation requirement for after-service health insurance coverage. Our records indicate that in addition to your current participation which began on 1 July 1972, you had been covered under the Headquarters medical insurance plan from 1 June 1965 to 31 July 1965 for a total contributory participation of 9 years and 3 months..."

On 31 July 1981, the Applicant separated from the service of the Organization.

On 6 December 1982, the Applicant requested the Division of Personnel, UNDP, to review his eligibility for after-service health insurance and consider the possibility of revalidating "the gap in the 10 year period by paying the related dues".

On 22 June 1983, the Division of Personnel, UNDP, transmitted to the Applicant a communication dated 17 June 1983, from the Chief of the Insurance Unit, United Nations, advising him that:

> "...it would not be possible to revalidate the gap in the ten year period for purposes of after-service health insurance by paying the related premium. The eligibility conditions for the United Nations After-Service Health Insurance Scheme (ASHI) were established in accordance with provisions approved by the General Assembly and an indispensable condition for eligibility is to have participated during employment in a contributory health insurance scheme of the United Nations or any of the agencies in the common system for a minimum of ten years. Since [the Applicant] did not meet the ten-year contributory participation requirement at the time of his separation from service with the Organization, he is not eligible to participate in ASHI."

On 9 July 1985, the Personnel Officer informed the Applicant that he was not eligible for after-service health insurance coverage, since he had not accrued the minimum of 10 years contributory service required to qualify.

On 8 November 1985, the Applicant sought the assistance of the UNDP Ombudsman Panel. In its report dated 22 March 1990, the Panel asked the Director of Personnel to endeavour "to find a solution (such as special leave without pay for nine months)" and allow the Applicant to accumulate the required ten years of contributory participation. The Applicant had indicated that he was willing to pay his portion of the contributions, together with the Organization's, in order to meet the 10 year requirement.

On 15 October 1990, the Chief, Policies and Compensation Section, Division of Personnel, UNDP, informed the Ombudsman Panel that it was not possible to make an exception in the Applicant's case and that the administrative decision to deny after-service health insurance coverage would be maintained.

On 2 December 1990, the Applicant requested administrative review of this decision. In a reply dated 14 February 1991, a

Senior Policy Officer at the UNDP Division of Personnel informed the Applicant that the decision would be maintained as he had "not been a contributory participant of a United Nations health insurance plan for the qualifying period of ten years".

On 14 March and 22 April 1991, the Applicant lodged an appeal with the Joint Appeals Board (JAB). The Board adopted its report on 1 October 1991. Its recommendation reads as follows:

> "Recommendation
>
> 26. ...the Panel unanimously agreed that the decision of the Administrator of UNDP that the Appellant is not eligible to participate in the after-service health insurance scheme of the UN, had been properly taken and did not violate the Appellant's rights. However, bearing in mind the long service of the Appellant and the fact that he fell short of the required ten years by eight months, the Panel recommended that the Secretary-General should reconsider the possibility of equitable relief to the staff member in the light of the Ombudsman Panel's proposal of 22 March 1990, namely, 'to find a solution (such as special leave without pay for nine months) which would indeed allow the staff member to have the ten years of contributory participation and solve a problem which has been pending since 1981 and concerned a loyal staff member of more than seventeen years of honourable service.'"

On 29 October 1991, the Director, Office of the Under-Secretary-General for Administration and Management transmitted to the Applicant a copy of the Board's report and stated as follows:

> The Secretary-General has re-examined your case in the light of the Board's report. He fully shares the Board's conclusion that the contested decision was properly taken and did not violate your rights.
>
> As recommended by the Board, the Secretary-General has given careful consideration to 'the possibility of equitable relief ... in the light of the Ombudsman Panel's proposal'. Bearing in mind that exceptions have not been made in the many other cases of staff members who, like you, have fallen short of the period of contributory service required, the Secretary-General has concluded that it would not

be appropriate to grant you, through the fiction of a reinstatement for the months necessary to complete such requirement and which would go back ten years, what has been denied to others in a similar situation.

The Secretary-General has therefore decided to maintain the contested decision and to take no further action on the case."

On 21 May 1992, the Applicant filed with the Tribunal the application referred to earlier.

Whereas the Applicant's principal contentions are:

1. Being stationed in the field when administrative instruction ST/AI/172 was issued, the Applicant was not aware of the implications of the circular. Otherwise, he would have joined the Van Breda scheme in 1967 or earlier.

2. The Applicant was not informed that the UN Headquarters Group Medical Insurance Plan which covered him did not provide for after service insurance.

Whereas the Respondent's principal contentions are:

1. Ten years contributory service in a United Nations Health Plan is a mandatory prerequisite for participation in the subsidized United Nations After-Service Health Insurance Scheme.

2. The eligibility requirements for the After-Service Health Insurance Scheme were promulgated in an administrative instruction. Failure to become acquainted with them is no excuse for not meeting them. The Applicant's rights to be considered for After-Service Health Insurance Scheme have been fully respected.

The Tribunal, having deliberated from 27 October to 9 November 1993, now pronounces the following judgement:

I. The Applicant appeals from the Respondent's decision, dated 29 October 1991, adopting a JAB finding that the Applicant had no legal entitlement to be included in the Organization's after-service

health insurance programme. The Respondent also considered, but rejected, a recommendation of the JAB regarding the possibility of equitable relief "through the fiction of reinstatement", dating back ten years, in order that the Applicant be deemed to have completed the months of contributory participation in the Organization's health insurance programme he needed for coverage by after-service health insurance. The Respondent concluded that such relief would not be appropriate, since it had been previously denied uniformly to other staff members similarly situated.

II. The Tribunal considers that the information before it is adequate for the resolution of this case and therefore denies the request for oral hearings.

III. The Applicant asks the Tribunal to find that the Respondent's decision was based on an ill-founded assessment, that the Applicant was denied due process by the Respondent's failure to agree to a request by the Applicant for a conciliatory procedure, and by his refusing to accept the JAB recommendation for equitable relief. In addition, the Applicant asks the Tribunal to find that the Respondent misinformed the Applicant on the possibility of obtaining after-service health insurance. Based on these contentions, the Applicant asks the Tribunal to order the Respondent to grant after-service insurance coverage to the Applicant or, in the alternative, to order compensation.

IV. The JAB rightly found that, at the time of the Applicant's retirement, ten years of contributory service in a UN health plan was a mandatory requirement for participation in the after-service health insurance programme subsidized by the Organization. This programme was established by administrative instruction ST/AI/172 dated 27 March 1967, following the acceptance by the General Assembly of the proposals by the Secretary-General regarding the programme. In order to be eligible, a staff member leaving the

service of the Organization on retirement had to have been a contributory participant in a UN health insurance plan for ten years. Paragraphs 3 and 8 of administrative instruction ST/AI/172, embody this requirement. Although the General Assembly subsequently approved, with effect from 1 January 1984, modifications to the eligibility requirements which, had the Applicant retired on or after that date, would have been of benefit to him, the Applicant was not able to take advantage of them since he retired from the Organization in July 1981.

V. The Applicant says that, although he knew of administrative instruction ST/AI/172, he was not made aware of its implications. The Tribunal considers that this provides no basis for the relief sought by the Applicant. It was his responsibility to understand the provisions and implications of the administrative instruction. The jurisprudence of the Tribunal has consistently so held. (Cf. Judgement No. 452, Acebes (1989), para. IX; Judgement No. 419, Greenham (1988), para. IX). Moreover, as the JAB noted, the Applicant was employed in administrative work as a UNDP Assistant Resident Representative, and "could be expected to have been more familiar with the administrative instructions and with UN administrative policy than the average staff member." If the Applicant had any questions regarding the administrative instruction, he should have addressed them, in time, to the appropriate UN office.

VI. In fact, it appears that, for a time in 1965, the Applicant had an opportunity to, and did, participate in a UN contributory medical insurance plan. But he chose to cancel his participation in that plan so that he could obtain non-contributory reimbursable health insurance coverage, which he maintained even after he could have participated in a contributory plan, pursuant to administrative instruction ST/AI/172. He joined the contributory plan only after

he was informed that his reimbursable insurance coverage would be terminated. As a result, by the time he retired in 1981, his total period of contributory participation was less than ten years.

VII. What the Applicant, in effect, asks of the Tribunal is that it alter, for his benefit, the terms of an administrative instruction, and disregard the action of the General Assembly, in order to provide after-service health insurance coverage to him, despite his failure to meet the explicit requirement of a minimum of ten years contributory participation. The Tribunal has held repeatedly that it is not empowered to create such exceptions. Action of that nature is within the legislative province of the General Assembly, not within the competence of the Tribunal. Hence, the Applicant's plea that the Respondent be ordered to grant him after-service insurance must fail.

VIII. It follows from the foregoing that no valid basis exists for holding that the Respondent's acceptance of the JAB report was irregular, much less for finding that he thereby denied the Applicant due process. Nor was there any denial of due process with respect to the Applicant's invocation of a conciliatory procedure. The record shows that the Respondent considered, as others in the Administration had done previously, the suggestion that some form of equitable relief be accorded the Applicant. This suggestion was also made by a member of the Ombudsman Panel and was echoed by the JAB. The Respondent's decision, as noted above, explains why the suggestion for equitable relief was rejected. The explanation, obviously followed due consideration. It was in conformity with the applicable norms and was neither motivated by extraneous factors nor otherwise flawed. No denial of due process occurred. Finally, it is plain that the Applicant was not misinformed regarding the possibility of obtaining after-service health insurance. Accordingly, on all counts, the Respondent's decision was both valid and lawful.

IX. For the foregoing reasons, the application is rejected.

(Signatures)

Jerome ACKERMAN
President

Samar SEN
Vice-President

Mikuin Leliel BALANDA
Member

New York, 9 November 1993

R. Maria VICIEN-MILBURN
Executive Secretary